

SERIAL NO. 10/765,450

REMARKS

At the outset, Applicant's attorney telephoned the Examiner on May 28, 2009 and pointed out to the Examiner that fabrics such as terry cloth are not moisture wicking fabrics, but are moisture absorbing fabrics. The Examiner agreed to consider this point and call the undersigned back. The Examiner has not called the undersigned back.

Claims 1-39 are in the application.

Claims 1-39 stand rejected.

Claims 1, 3, and 19 stand rejected under 35 USC 102 as anticipated by U.S. Patent 5,377,360 ("Fleitman").

Claims 2 and 4 stand rejected under 35 USC 103(a) as unpatentable over Fleitman in view of U.S. Patent 6,025,287 ("Hermann").

Claims 5-8, 10, 12-15, 17, 21, 23-26, 30-33, 35 and 37 stand rejected under 35 USC 103(a) as unpatentable over U.S. Patent 3,906,548 ("Kallis") in view of Fleitman.

Claims 9, 11, 16, 18, 20, 22, 27, 29, 34, 36, 38, and 39 stand rejected under 35 USC 103(a) over Kallis in view of Fleitman and further in view of U.S. Patent 6,025,287 Hermann.

Independent claims 1, 5, 12, 19, 23, 30, 37 have been amended to more clearly point out that the moisture wicking fabric is not absorbent or water retentive. No new matter has been added.

The Examiner in rejecting claims 1, 3, and 19 states:

Claims 1, 3, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by

Fleitman (US 5,377,360). Fleitman teaches a sweatband having a hydrophilic foam core 14 and with a fabric with a cloth element 12 covering the foam core. Fleitman teaches that terry cloth (is commonly used as fabric for the sweatband which would provide wicking properties. Fleitman further teaches hook and loop fabric 22 for adjusting the size of the sweatband.

It is respectfully submitted that the Examiner mischaracterizes the disclosure of Fleitman. Fleitman distinguishes his sweat band over the prior art sweat bands which he discloses in col. 1 as follows:

SERIAL NO. 10/765,450

Sweatbands, such as headbands and wristbands, are commonly used by athletes to absorb perspiration, and to a lesser degree, to keep hair out of the eyes. A common sweatband is formed of a double layer of a stretchable, terry cloth-like material, which can be stretched to conform to different size heads and wrists. and absorbs sweat. 10

Fleitman discloses using a fabric cover, but there is no disclosure that the fabric is a non-absorbent, non water retentive fabric.

Fleitman describes his fabric cover at col. 1 as follows:

element. The cloth element is made of a material capable of transmitting water, and has opposed end portions, which are sufficiently long to extend around a body part such as a wrist or a head. The water-absorber is soft and 55

Typically the cloth element is formed of a stretchable material, such as a combination of spandex and a fibrous material. Dependant upon the material utilized, the cloth element can also absorb sweat as well as transmit 65

The only fabric actually disclosed by Fleitman is disclosed at col. 3:

The cloth element 12 is made of a water transmissive material. Additionally, the cloth element 12 can be made of a water absorbent material. Preferably that material is stretchable to provide adjustability in the length of the sweatband and provide a snug, comfortable fit. Stretchability can be obtained by using an elastic material such as spandex, in combination with synthetic or natural fibrous materials. The fibrous material can be cotton, wool, acrylic, polyester, rayon, acetate, triacetate, nylon, and combinations thereof. Specific combinations that are suitable for sweatbands are 90% cotton/10% Lycra brand (Du Pont de Nemours, E. I. & Co., Wilmington, Del.) spandex; 80% nylon/20% Lycra; 85% nylon/15% Lycra; and 55% cotton/35% polyester/10% Lycra. 45

None of the fabrics disclosed are wicking fabrics that are non-absorbent and non-water retentive. The fibrous materials that are disclosed are all of a water absorbing, water retentive type. As is common knowledge, terry cloth is water absorbent and water retentive, but is not a wicking fabric.

It is therefore respectfully submitted that Fleitman fails to disclose the novel structures as set out in claims 1, 3 and 19.

SERIAL NO. 10/765,450

As clearly set out in Applicant's specification:

[0024] Sweat band 100 includes a sweat band portion 101, an adjustment portion 103 and one or more attachment portions 105. Sweat band portion 101 is formed from a piece of moisture wicking fabric 111 such as COOLMAX® which is a high tech fabric available from Dupont. This fabric is made from specially engineered polyester fibers with an increased surface area. The surface 101a of the fabric 111 in contact with skin pulls moisture away from the skin to its opposite surface.

A moisture wicking material is one which "wicks" the moisture away from the moist surface. Terry cloth does not wick moisture away but rather absorbs moisture.

For the foregoing reasons, claims 1, 3 and 19 are not shown, taught or made obvious by Fleitman.

Claims 2-4 all depend from claim 1 and add further limitations. For the same reason that claim 1 is not anticipated by Fleitman, claims 2-4 are not shown, taught or made obvious by Fleitman in combination with Herman.

Claims 20-22 all depend from claim 19 and add further limitations. For the same reason that claim 19 is not anticipated by Fleitman, claims 20-22 are likewise not shown taught or made obvious by Fleitman in combination with other references.

Claims 5-8, 10, 12-15, 17, 21, 23-26, 30-33, 35 and 37 stand rejected under 35 USC 103(a) as unpatentable over U.S. Patent 3,906,548 ("Kallis") in view of Fleitman.

The Examiner cites Kallis for teaching a helmet having a cushion 40 and an attachment portion 42. The Examiner acknowledges that Kallis does not teach "the cushion portion comprising a hydrophilic foam core and a fabric covering said foam core." The Examiner cites Fleitman as teaching a cushion comprising "a hydrophilic foam core 20... and a fabric 50...covering foam core 30 (sic)."

Claim 5 recites "a moisture wicking fabric covering said foam core." As pointed out with respect to claim 1, Fleitman fails to disclose, teach or suggest the use of a wicking fabric.

Kallis likewise fails to show, teach or suggest the use of a wicking fabric.

In addition, claim 5 recites that the fabric is non-absorbent and non-water retentive. Neither Fleitman nor Kallis shows, teaches or suggests such a fabric.

Accordingly, claim 5 is not shown, taught or made obvious by the references taken singly or in combination.

SERIAL NO. 10/765,450

Claims 6-11 depend from claim 5 and add further limitations. For the same reason that claim 5 is not disclosed, taught or made obvious by the references taken singly or in combination, claims 6-11 are likewise not disclosed, taught or made obvious by the references taken singly or in combination.

Claim 12 recites "a moisture wicking fabric covering said foam core" and that the fabric is non-absorbent and non-water retentive. As pointed out with respect to claims 1 and 5, Fleitman fails to show, teach or suggest the use of a wicking fabric.

Kallis likewise fails to show, teach or suggest the use of a wicking fabric. Accordingly, claim 12 is not disclosed, taught or made obvious by the references taken singly or in combination.

Claims 13-18 depend from claim 12 and add further limitations. For the same reason that claim 12 is not disclosed, taught or made obvious by the references taken singly or in combination, claims 13-18 are likewise not disclosed, taught or made obvious by the references taken singly or in combination.

Claim 23 recites, inter alia:

said fabric cover comprising a moisture wicking fabric, said moisture wicking fabric wicking moisture contacting its outer surface to said foam core

Claim 30 recites, inter alia:

said fabric covering comprising a moisture wicking fabric, said moisture wicking fabric serving to wick moisture contacting its outer surface to said foam core

Claim 37 recites, inter alia:

a moisture wicking fabric covering said foam core, said moisture wicking fabric being disposed to contact the head of a wearer of said head covering

In addition, each of these claims recites that the fabric is non-absorbent and not water retentive.

For the same reason that claims, 1, 5, 12, and 19 are not shown, taught or made obvious by the references taken singly or in combination, claims 23, 30 and 37 are likewise not shown, taught or made obvious by the references taken singly or in combination.

Claims 24-29 depend from claim 23; claims 31-36 depend from claim 30; and claims 38-39 depend from claim 37 and for the same reason that the parent claims are not shown, taught or made obvious by the references taken singly or in combination claims 24-29, 31-36 and 38-39 are likewise not shown, taught or made obvious by the references taken singly or in combination.

None of the references show, teach or describe use of a wicking fabric that is non-absorbent and non-water retentive.

SERIAL NO. 10/765,450

Based on the foregoing, all the claims are allowable. Reexamination and reconsideration are requested. It is further requested that the claims be allowed and this application be passed to issue.

Respectfully submitted,

DONALD J. LENKSZUS, P.C.

/Donald J Lenkszus/

JULY 27, 2009

Donald J. Lenkszus, Reg. No. 28,096

P.O. Box 3064

Carefree, AZ 85377-3064

Telephone: (602) 463-2010

Facsimile: (480) 595-7695